FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 63/2007

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 7, 2007.

Heard Shri Motghare, the learned counsel for the appellants.

This second appeal is preferred by the original defendants against two concurrent judgments.

The respondent/plaintiff is the wife of the appellant/defendant no.1, and the appellant/ defendant no.2 is the mistress of the appellant/ defendant no.1. According to the plaintiff, she purchased the suit plot by a registered sale deed dated 1/8/1990 and constructed a two storeyed house thereon from her own earnings. It was the case of the plaintiff that the defendant no.1 was jobless at the time of his marriage and was totally dependent on the plaintiff. It was further pleaded that the defendant no.1 had illicit relations with the defendant no.2 since five years prior to the institution of the suit and the defendant nos. 1 and 2

had taken forcible possession of the first floor of the suit house and were residing therein since 1998. Though the plaintiff asked the defendants to vacate the suit house, they did not do so and, therefore, the plaintiff had filed a suit for possession of the first floor of the suit house.

The defendants filed their written statement and denied the claim of the plaintiff. It was pleaded in the written statement that the defendant no.1 is the owner of the suit property and the defendant no.1 had purchased the suit property from the income of his independent business which he had commenced after the marriage with the plaintiff.

The trial Court framed the issues and after considering the evidence on record, held that the plaintiff had proved that she had purchased the suit plot from her own funds and had constructed a house thereon from her own earnings. The Court further held that the defendants were illegally residing on the first floor of the suit premises and as the defendants had failed to prove that they were the owners of the half portion of the suit house, the suit of the plaintiff was consequently decreed. The trial Court considered the fact that the plaintiff-wife was working in the Zilla Parishad as a Clerk for more than twenty years. The findings recorded by the trial Court were upheld by the appellate Court in the

judgment dated 20th December, 2006. The appellate Court, after re-appreciating the evidence on record, maintained the findings recorded by the trial Court, that the plaintiff-wife alone was the owner of the suit plot and the house standing thereon. The appellate Court, therefore, directed the defendants to hand over the possession of the first floor of the house to the plaintiff.

The findings recorded by the trial and the appellate Court are pure findings of facts based on the proper appreciation of the material evidence on record. The findings do not give raise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP